Supreme Court
FILED
MAR 7 1994
OFFICE OF THE CLERK

No. 93-1179

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

SAMIRAT HAFIZ
Petitioner,

vs.

ELECTRONIC DATA SYSTEMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER

SAMIRAT HAFIZ, PRO SE
4095 ROLLS ROYCE
COLUMBUS, OHIO 43232
(614) 860-0204
(614) 692-4485

QUESTION PRESENTED FOR REVIEW

Whether recent Michigan case law, such as Rood v General Dynamics Corp and Schippers v SPX Corp. 444 Mich 107 (1993), decided after the adjudication at the Sixth Circuit Court of Appeals, can alter the outcome of the decision in favor of Samirat Hafiz in her dispute with EDS, where the conflict involves the viability of an appeal to the United States Supreme Court arguing, inter alia, that EDS wrongly discharged her without cause from a just-cause employment?

Petitioner answers, "Yes."

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

STATEMENT OF CASE 2

ARGUMENT 3

I Whether recent Michigan case law, such as Rood v General Dynamics Corp and Schippers v SPX Corp. 444 Mich 107 (1993), decided after the adjudication at the Sixth Circuit Court of Appeals, can alter the outcome of the decision in favor of Samirat Hafiz in her dispute with EDS, where the conflict involves the viability of an appeal to the United States Supreme Court arguing, inter alia, that EDS wrongly discharged her without cause from a just-cause employment. 3

CONCLUSION 13

TABLE OF AUTHORITIES

CASES

Rood v General Dynamics Corp & Schippers v SPX Corp, 444 Mich 107 (1990) .. 3, 4, 5, 6, 8, 9, 12

Rowe v Montgomery Word Co. 437 Mich 627; 473 NW2d 268 (1991) 4

Toussaint v Blue Cross & Blue Shield of Michigan, 408 Mich 579; NW2d 880 (1980) 4, 7, 8

No. 93-1179

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

SAMIRAT HAFIZ
Petitioner,

vs.

ELECTRONIC DATA SYSTEMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONER

STATEMENT OF THE CASE

The facts in this case are quite voluminous, and are contained in Petitioner's Petition for Writ of Certiorari. Therefore, in the interest of efficiency and time saving, the facts will not be reproduced in this supplemental brief.

ARGUMENT

I

RECENT MICHIGAN CASE LAW, SUCH AS ROOD V GENERAL DYNAMICS CORP AND SCHIPPERS V SPX CORP. 444 MICH 107 (1993), DECIDED AFTER THE ADJUDICATION AT THE SIXTH CIRCUIT COURT OF APPEALS, CAN ALTER THE OUTCOME OF THE DECISION IN FAVOR OF SAMIRAT HAFIZ IN HER DISPUTE WITH EDS, WHERE THE CONFLICT INVOLVES THE VIABILITY OF AN APPEAL TO THE UNITED STATES SUPREME COURT ARGUING, INTER ALIA, THAT EDS WRONGLY DISCHARGED HER WITHOUT CAUSE FROM A JUST-CAUSE EMPLOYMENT.

Michigan employment law creates the presumption that absent specific evidence that the employer has limited its right to terminate an employee at-will, employment for an indefinite duration will be considered at-will employment. Yet recent Michigan case law has clarified the requirements needed to prove just case employment, as opposed to at-will employment. In doing so, a reexamination of the Petitioner's case shows that

sufficient evidence exists to reasonably interpret her employment with EDS as being terminable only for just cause. Thus, there is the existence of a genuine issue of material fact such that the issue must be allowed to be resolved by a jury, and not dismissed upon summary disposition.

In Rood v General Dynamics Corp and Schippers v SPX Corp, 444Mich 107 (1993), the court tried to rectify ambiguities that remained from earlier decisions, e.g. Toussaint v Blue Cross & Blue Shield of Mich, 408 Mich 579; 292 NW2d 880 (1980), and Rowe v Montgomery Word & Co, 437 Mich 627: 473 NW2d 268 (1991). Rood actually involved two consolidated cases. As the facts in Schippers are not proximately similar to those in the present matter, Schippers will not herein be analyzed.

In Rood, a plant physician with 15

years experience, was discharged from his employment. Dr. Rood had begun his employment at Chrysler Corporation in 1968. In 1980, he was transferred to the Detroit tank plant. Two years later, Chrysler sold the tank division to General Dynamics Corp. Dr. Rood was allowed to remain as plant physician after the sale. Sometime thereafter, General Dynamics established the position of division medical director to oversee all medical personnel. Dr. Rood's responsibilities were severely undermined and curtailed as a result of his corporate decision. Consequently, Dr. Rood position was no longer needed, and he was dismissed from his employment. Dr. Rood brought action against General Dynamics Corp. in 1987, claiming that his dismissal violated his employment agreement, negligent evaluation, and breach of the covenant of

good faith and fair dealing. Dr. Rood relied on a derailed industrial relations policy and procedure guide defining the grounds for termination. There was no language, however, either specifically creating or disclaiming a just cause employment relationship. After dismissing the latter two counts pursuant to a motion filed by the Defendant, the Macomb County Circuit Court granted the Defendant's subsequent motion for summary disposition. Dr. Rood appealed the decision, and the Michigan Court of Appeals reversed the trial court decision.

The issue on appeal was whether an employee has a maintainable cause of action against his employer for wrongful discharge, where he was dismissed seemingly without cause, and the employer is arguing that the employment was terminable at will. The Michigan Supreme

Court held that although some of an employer's guidelines and policies, when examined individually, may not be reasonably capable of being interpreted as promising just cause termination, when the written termination policy is considered with other employer's policies, a reasonable juror could find that the overall employee policies would reasonably instill a "legitimate expectation" of just cause employment. The court held that the termination policy need not contain the words "just cause", nor must the procedure articulate the precise standard by which the employee's conduct should be judged. This "legitimate expectation" standard, communicated by the court in Toussaint dictates that the trial court should examine employer policy statements concerning employee discharge, if any, to determine as a threshold matter, whether

such policies are reasonably capable of being interpreted as promises of just cause employment. If the trial court were to believe the policies cannot be so interpreted, the court can dismiss the plaintiff's claim on the employer's motion for summary disposition. But if the employer's termination policies are capable of two reasonable interpretations, then the issue is one for the jury, i.e., a question of fact. The court reasoned that the "legitimate expectations" theory is predicated on public policy considerations and extra-contractual causes of action, "the legitimate expectations of Toussaint is not based on traditional contract analysis." Rood at 606.

Applying the facts in Rood to the matter at hand, one notices several factual similarities between the two

situation. As in Rood Hafiz transferred to from General Motors to EDS, then, she was "phased out", as was Dr. Rood. In both cases, there seems to be some ambiguity created by the employer's statements and representations as to what type of employment existed. According to the decision in Rood Hafiz may be able to demonstrate to the court that her employment with EDS constituted just cause employment.

As to the legitimate expectation theory, there is sufficient evidence present for a court to hold that there is a genuine dispute as to which type of employment agreement was present between Hafiz and EDS. It is not disputed that General Motors Employment Agreement stated that employment was based on a calendar, month-to-month format. However, the written policies do appear to be subject

to more than one reasonable interpretation, i.e., just cause and at-will, when viewed all together, and especially when seen with oral assurances made to Hafiz by EDS and GM officials. Language existed in the General Motors Employment Agreement to indicate that the employment was at-will, yet there seem to be ambiguities present to infer the contrary. Particularly when viewed in a light most favorable to the plaintiff, Hafiz, it seems that it would certainly be reasonable for her to have a legitimate expectation that employment was terminable only for just cause.

In addition, there is language in the General Motors Employment Handbook, "Working with General Motors", that indicates employment termination only for just-cause. A copy of this handbook was presented to the Petitioner. According

to page 28 of the handbook:

> A discharge is the separation of an employe [sic] prior to age 60 for personal conduct in the course of his or her duties such that the employe's [sic] continued employment would not be in the best interests of the Corporation.
>
> Reason for discharge may include dishonesty, willfull [sic] violation of instructions or Corporate Policy, insubordination, or refusal to comply with governmental requirements related to employment. In addition, conduct reflecting badly on the Corporation, even if it occurs away from the job, may be viewed as grounds for discharge.
>
> Page 28 of the handbook went on to state:
>
> A final release is the separation of an employe [sic] because of unsatisfactory performance of assigned duties or physical or mental incapacity to perform assigned duties.

These representations appear to demonstrate that termination from employment is based upon specific conditions and circumstances; these are certainly indicative of just cause

employment than at-will employment. Because of the conflicting statements in the Handbook, the Employment Agreement, and the oral assurances, it may be reasonable to infer more than one interpretation as to the nature of the employment. There is the possibility that the employment could be either just cause or at-will. In any event, such a conflict creates a question for the jury to decide, i.e., a question of fact. The Rood court held that although any one factor or representation by itself may not create just cause employment, if the policies and statements, when examined as a whole, offer two reasonable interpretations, then the court must allow the case to go to the jury on its merits. This is such a case. The Employment Handbook, coupled with several oral assurances made by EDS and GM officials to

Petitioner, reasonably create the perception that the Petitioner was in a just cause employment.

CONCLUSION

The Michigan Supreme Court has reexamined two theories, contractual and legitimate expectation, to better distinguish and clarify the requirements for just cause or at-will employment relationships. The Supreme Court has extended and refined past precedent of the legitimate expectations theory in order to ameliorate an approach to wrongful discharge cases. With the legitimate expectation theory, the employer's termination policies must be capable of having two reasonable interpretations. Hafiz's case has considerable merit based on this theory.

There is sufficient evidence that two reasonable interpretations exist as to the type of employment sustained by Hafiz during her tenure with General Motors, and then with EDS. Therefore, the matter is one for the jury to decide, i.e., a question of fact; and the Petitioner, Samirat Hafiz, respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

Samirat Hafiz

SAMIRAT HAFIZ, Pro Se
4095 Rolls Royce
Columbus, Ohio 43232
(614) 860-0204
(614) 692-4485